

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: April 30, 1997

TO : Terry C. Jensen, Acting Regional Director
Region 19

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice 536-2554-2500
548-6040-5050

SUBJECT: IBEW, Local 191 548-6050-0100
Case 19-CB-8016

This case was submitted for advice as to whether the union violated Section 8(b)(1)(A) by: informing an employee that it is a condition of employment that the employee pay contributions to the union's market recovery fund where the employee is working on a Davis-Bacon job; using its internal union disciplinary process to compel payment of "additional" dues and fees from employees working on Davis-Bacon jobs, where the money is deposited in the union's general fund, but the payment is equal to the amount of contributions that the employee would have paid to the union's market recovery fund; and using its internal union disciplinary process to compel payment of "additional dues and fees" from employees working on a Davis-Bacon job, where the union's by-laws and other written procedures do not describe or explain that the required payment will be deposited in the union's general fund, rather than the union's market recovery fund.

We agree with the Region, and for the reasons set forth by the Region, that the letter sent to the Charging Party by the Union on December 2, 1996 and January 8, 1997, requesting payment of market recovery money that the employer had not deducted, and stating that "this is a condition of employment" violated Section 8(b)(1)(A).¹

We further conclude that the Union has not violated the Act in any other respects. The facts indicate that all market recovery payments for employees working on Davis-Bacon jobs are deposited into the Union's general fund

¹ We note that the Union agrees that it can not require market recovery payments as a "condition of employment" and will agree to rescind that portion of the letter indicating such a condition.

which provides funds for the operation of the Union, **not** for market recovery.² Under the Union's by-laws, general fund moneys can not be used for other purposes, thus, it would be a violation of the Union's by-laws for the Union to transfer money out of the Union's general fund for market recovery. And there is no allegation or evidence that general fund moneys are ever used for market recovery purposes. The fact that the Union's by-laws have not yet been amended to indicate this procedure does not lead to a different result, since, in fact, no market recovery payments made by employees working on Davis-Bacon jobs go into the organizing fund. Thus, although these payments are called market recovery, they are nothing but increased dues for those members who work on Davis-Bacon jobs. This conclusion is supported by the Department of Labor who advised us that there would be no violation of the Davis-Bacon Act, Copeland Act or DOL's regulations if employees working on Davis-Bacon jobs are required to make additional payments to the Union, as long as those payments are not actually spent for market recovery.³

It follows from the above that the Union did not violate the Act by using its internal union disciplinary procedure to compel the charging party, a Union member, to pay the additional dues and fees earmarked market recovery, but not actually spent for such purpose. The Charging Party was given full notice and opportunity to be heard. He failed to attend the Union's Executive Board meeting and was thus fined. The Union may use its internal disciplinary process to enforce its own internal union rules, especially when such payments do not otherwise run afoul of the Act.

B.J.K.

² Market recovery payments made by employees who are not working on Davis-Bacon jobs are deposited into an "organizing fund", which is used for organizing and market recovery. This fund is separate from the general fund.

³ Conversations with Corliss Sellers, National Office Program Administrator, Wage and Hour division, and DOL Attorney Doug Davidson.

